
N E W S

PRACTICE LETTER POINTERS

Vol. No. 7; Issue No. 1
July 2005

A Carrier Retains the Right to Recover as Subrogee Against a Defendant Who is Not a Participant in Michigan's No-Fault Insurance System

***CARDELLI, LANFEAR
& BUIKEMA, P.C.***

322 W. Lincoln
Royal Oak, Michigan 48067
(248) 544-1100
(248) 544-1191 (FAX)
5537 Glenwood Hills Parkway, SE
Suite 201
Grand Rapids, Michigan 49512
(616) 285-3800
(616) 285-1150 (FAX)

Practice Pointers is published seasonally as a service to our clients and friends. Your comments and articles are invited.

Contributors:

Anthony F. Caffrey, III, Burton G. Mills

Summary: The Michigan Court of Appeals has held that a PIP carrier, after paying PIP benefits to its insured, has a cause of action pursuant to the subrogation provisions of its auto policy against a tortfeasor whose negligence caused the insured's injuries when the tortfeasor is not a participant in the Michigan No-Fault system. In addition, the right of subrogation was vested at the time that the carrier paid the benefits, and a subsequent release signed by the insured [for his claim for damages other than PIP benefits] did not release the carrier's claim because the insured had no authority to release the carrier's vested right.

PRACTICE

POINTERS

Vol. No. 7; Issue No. 1
July 2005

In a published opinion¹ a panel of The Michigan Court of Appeals has upheld an auto carrier's right to recover via subrogation for amounts paid to its insured under a no-fault auto policy. The defendants in the underlying case were an out-of-state trucking company and its driver. Because the trucking company had not operated within the state of Michigan for more than thirty (30) days in the calendar year, it was not required to participate in Michigan's no-fault insurance system. As a result, when the company's driver was at fault for an accident occurring in Michigan, the trucking company was liable to the injured party under a typical automobile liability theory distinct from any consideration under the no-fault act.

The plaintiff in the underlying case was an insured of State Auto Insurance Companies under a typical Michigan No-Fault auto insurance policy. He was injured in an accident for which Jose Flores Velazquez, a driver for Poly-Trucking, Inc., was determined to be at fault. Poly-Trucking, Inc. did not typically operate in Michigan and was not required to participate in the Michigan No-Fault automobile system (because it did not operate in Michigan for more than thirty days in one year). Therefore, Velazquez and Poly-Trucking, Inc. did not enjoy the tort immunities of the Michigan No-Fault Act, *MCL 500.3101, et seq.*

As a result, Velazquez and Poly-Trucking, Inc. were liable in tort for the injured plaintiff's claim. The plaintiff elected to claim first-party benefits from his own carrier, State Auto Insurance Companies, and State Auto

made typical PIP benefit payments to its insured. The plaintiff/insured filed a third-party claim against Velazquez and Poly-Trucking and eventually settled with the self-insured trucking company for \$197,500 [for non-economic damages and economic damages beyond the statutory limits for PIP benefits recovery].

Under the subrogation provisions of its policy, State Auto Insurance Companies filed suit against Velazquez and Poly-Trucking, Inc. in the Circuit Court of Kent County. Defendants filed a motion for summary disposition on the grounds that they were not required to participate in Michigan's no-fault auto insurance system and the trial court agreed, granting the motion.

The Court of Appeals agreed that Poly-Trucking, Inc. did not have to participate in the no-fault system, but found that it was liable in tort and that State Auto had a valid subrogation claim and would be allowed to recover for any benefits that it paid [as its obligation to its insured for PIP benefits] which are "reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation." *MCL 500.3107(1)(a)*. A negligent defendant is liable for all injuries resulting directly from his wrongful act, whether foreseeable or not, if the damages were the legal and natural consequences of his conduct and might reasonably have been anticipated. *Ensink v Mecosta Count General Hosp*, 262, Mich App 518, 524, 687 NW2d 143 (2004).

State Auto also asked the court to consider the validity of a release signed by its insured for his claim. The court concluded that

¹ *State Auto Insurance Companies v Velazquez and Poly-Trucking, Inc.*, _____ Mich App _____, Ct. of App. Docket No. 253886, June 16, 2005.

Vol. No. 7; Issue No. 1
July 2005

State Auto's subrogation rights were vested at the time it made its payments and was already standing "in the shoes of the subrogor" and its insured did not have the ability to sign away State Auto's rights [to recover].

The obvious conclusion, therefore, is that an auto carrier which pays PIP benefits to its insured has the right to pursue a subrogation claim against a wrongdoer who is not a



Burton G. Mills works in the insurance coverage section of Cardelli, Lanfear & Buikema, P.C.'s Grand Rapids office and can be reached at (616) 285-3800 or by e-mail at bmills@cardellilaw.com.

participant in the Michigan no-fault system, and that its right to do so is vested at the time it makes the payment(s) to its insured.

If you should have any questions concerning this issue or any other insurance coverage issues, please do not hesitate to contact Burton G. Mills or Anthony F. Caffrey.



Anthony F. Caffrey III works in the insurance coverage section of Cardelli, Lanfear & Buikema P.C.'s Grand Rapids office and can be reached at (616) 285-3800 or by e-mail at acaffrey@cardellilaw.com

CARDELLI, LANFEAR & BUIKEMA, P.C.

ABOUT THE FIRM

Cardelli, Lanfear & Buikema, P.C. is an A/V rated firm that specializes in litigation matters with emphasis on personal injury and commercial defense litigation. It is dedicated to providing clients with the highest quality, cost effective legal services. The firm's areas of concentration include product liability, general negligence, insurance defense, and toxic torts. Cardelli, Lanfear & Buikema, P.C. also handles wrongful discharge and employment discrimination matters and environmental hazard claims. In addition to this focus on litigation matters, the firm is involved in a substantial amount of appellate work.

FIRM MEMBERS

Thomas G. Cardelli	Anthony F. Caffrey, III	Donna M. Posey
R. Carl Lanfear, Jr.	William M. Hartwell	Geoffrey M. Brown
Eric A. Buikema	Timothy A. Goodnow	Carl T. Rashid
Kamron K. Lessani	Bryon K. Kelley	David A. Pizzuti
Matthew W. Tompkins	Burton G. Mills	